

The County Motor Fuel Tax Law, 55 ILCS 5/5-1035.1 (1996 State Bar Edition), provides that the county board of the counties of DuPage, Kane and McHenry may impose a tax upon all persons engaged in the county in the business of selling motor fuel at retail for the operation of motor vehicles upon public highways or for the operation of recreational watercraft. (This is a GIL).

February 24, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated January 25, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Thanks for looking at my question about the County Motor Fuel Tax imposed for the three counties (DuPage, Kane, and McHenry) under 55 ILCS 5/5-1035.1.

I am trying to develop computer rules under a new accounting and invoicing software called PRODUCT and I am confused about the word 'retail' as used in Sec. 5-1035.1. This, coupled with some comments from our customers may indicate that we are overcharging our 'bulk' customers this county motor fuel tax.

1) 'Retail' per Sec. 5-1035.1, '...impose a tax upon all persons engaged in the county in the business of selling motor fuel...at retail for the operation of motor vehicles upon public highways...'

2) Some 'bulk' customers claim that since COMPANY accepts their order outside these 3 counties, the county motor fuel tax is not due on their purchases. These customers are purchasing in 'bulk' motor fuel for purposes other than to resell the motor fuel. Many customers come to our terminal (outside these 3 counties) and pick up the products in their trucks or via common carriers for delivery to their location within one to these 3 counties.

QUESTIONS:

1) Is COMPANY making a sale 'at retail for operation of motor vehicles' when COMPANY sell at bulk, and:

a) the orders/pick-up occurs outside these counties, or

b) COMPANY makes deliveries to a customer's bulk storage located within these counties, but does not make deliveries directly into the fuel supply tank of a motor vehicle. We realize that some of

these bulk customers may withdrawal from their bulk storage for delivery directly into the fuel supply tank of their motor vehicles.

2) If COMPANY's bulk sales to these purchasers are viewed as sales 'at retail', are some of the customers correct in that COMPANY can only charge the county motor fuel tax on that percentage that they (the purchaser) will use in highway vehicles?

3) Understand there may be one or more court cases involving the county motor fuel tax. If so, is it possible to get a copy of the case (or the citation if not yet resolved)?

COMPANY understands that the county motor fuel tax is due to the State when COMPANY makes a sale from its company operated Service Stations pumps (located within these counties) into a highway vehicle supply tank. Also, COMPANY understands when it makes a delivery to non-COMPANY company operated service stations (i.e., independent dealers selling COMPANY products), the county motor fuel tax is not charged by COMPANY to these independent dealers. These independent dealers will remit this tax directly to the State.

Please do not hesitate to call me if you have any questions, or wish to discuss this matter.

The County Motor Fuel Tax Law, 55 ILCS 5/5-1035.1 (1996 State Bar Edition), provides that the county board of the counties of DuPage, Kane and McHenry may impose a tax upon all persons engaged in the county in the business of selling motor fuel at retail for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways.

This tax is imposed, as far as is practicable, in the same manner as the Retailers' Occupation Tax. As a result, the regulations applicable to the Retailers' Occupation Tax, as far as practicable, apply to this tax. There are no separate regulations for the County Motor Fuel Tax. The regulations governing the Retailers' Occupation Tax are found at 86 Ill. Adm. Code Part 130.

The Retailer's Occupation Tax Act defines "sale at retail" as "any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property..." See the enclosed copy of 86 Ill. Adm. Code 130.201. The County Motor Fuel Tax further limits this definition to retail sales of motor fuel for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways. If a retail sale of motor fuel is not for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways, then the sale is not subject to County Motor Fuel Tax.

Please find enclosed a copy of 86 Ill. Adm. Code 270.115, which explains how to determine the applicability of a Home Rule Municipal Retailers' Occupation Tax. These principles apply to other types of local taxes as well. As you can see, the tax is incurred when sellers engage in the business of selling in a jurisdiction imposing the tax. It is the Department's position that the most important element in selling is the acceptance of the purchase order.

Consequently, the location at which the purchase order is accepted determines the proper tax rate. Absent clear proof to the contrary, the Department will assume that retailers have accepted the purchase order at the place of business at which the retailers received the purchase order (retailers' location). In the absence of acceptance of a purchase order in Illinois, the location of the sale is considered to be where the inventory from which the order is filled is maintained in the State.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.